

BEFORE THE COMMISSIONER OF FINANCIAL REGULATION

IN THE MATTER OF

*

MORTGAGE BANKERS, LTD.

* OAH NO. DLR-CFR-76-07-26022

LICENSEE

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OPINION AND FINAL ORDER

INTRODUCTION

This matter came before the Commissioner for argument on exceptions filed by the Respondent Mortgage Bankers, Ltd., to the Proposed Order of December 11, 2007. On November 7, 2007, Administrative Law Judge Denise Oaks Shaffer ("ALJ") filed a Recommended Decision and Order in which she recommended that the Respondent be found in violation of §11-517(a)(5) of the Financial Institutions Article, Annotated Code of Maryland, and that the company's mortgage lender license be revoked.

On December 11, 2007, the Commissioner of Financial Regulation issued a Proposed Order that adopted the ALJ's Recommended Findings of Fact, Conclusions of Law, and Recommended Order. The Respondent filed exceptions to the Proposed Order.

A hearing on the exceptions was held before the Commissioner of Financial Regulation, Sarah Bloom Raskin, ("Commissioner") on March 25, 2008. Robin Snyder, the President of Mortgage Bankers, Ltd., appeared on behalf of

the company. Matthew Lawrence, Assistant Attorney General, was the presenter. The proceedings were recorded.

The exhibits from the hearing before the ALJ were before the Commissioner. A transcript of the hearing was not prepared.

PRELIMINARY MATTERS

Mr. Snyder, on behalf of the Respondent, requested that four documents be admitted into evidence. Mr. Lawrence objected, citing the provisions of COMAR 09.01.03.09, which require that a party wishing to introduce additional evidence at a hearing on exceptions file a written request at least 15 days before the scheduled date of the hearing. No request was filed. Therefore, the documents were not admitted.

FINDINGS OF FACT

The Commissioner adopts the Findings of Fact recommended by the ALJ, with amendment to Finding of Fact #1 changing the license number from 1165 to 1195, and to Finding of Fact #5 where the date should be July 26, 2005, not 2007.

CONCLUSIONS OF LAW

The Commissioner adopts the ALJ's Conclusions of Law.

DISCUSSION

Mr. Snyder raised several objections to the Proposed Order in his written exceptions and at the hearing. Some are minor - the license number referred to in Finding of

Fact #1 was incorrect, the license number of Mortgage Bankers, Ltd., as reflected on CFR Exh. #7, is 1195. This is clearly a technical error and does not in any way affect the substance of the recommended order. The date of the indictment against him in federal court was March 29, 2007, as noted on the first and last pages of the indictment, CFR Exh. #8. The handwritten date on the front of the exhibit, 8/17/07, was the date of the attestation of the copy provided by the Clerk's Office.

His substantive arguments were that the Commissioner lacked jurisdiction over the transaction that was the subject of the action against him; that the Commissioner's office did not notify him of the complaint when it was filed, giving him a chance to respond to it; and that he was willing to pay the complainant, [REDACTED], the \$7,500 at issue, but could not do so based on advice of his counsel.

On the jurisdictional issue, the Commissioner has authority under Section 11-517(a)(5) to consider whether the actions of an owner or officer of a licensee demonstrate "unworthiness, bad faith, dishonesty, or any other quality that indicates that the business of the licensee has not been or will not be conducted honestly, fairly, equitably, and efficiently." The evidence in the record in this case shows that Mr. Snyder, the president of Mortgage Bankers, Ltd., received \$7,500 on August 15, 2005 from a potential borrower, [REDACTED], for the costs of appraising fifteen properties that were to be refinanced. He did not use the

money to have the properties appraised, and did not return the money to the borrower. The borrower made repeated attempts to contact the company, but received no response. Findings of Fact ## 1, 4, 5, 6, 7, and 8. These facts clearly call into question the ability of Mr. Snyder to conduct the mortgage lending business of Mortgage Bankers, Ltd. in an honest, fair, and efficient manner.

Mr. Snyder claims that this transaction was not covered by the Maryland Mortgage Lender Law because the borrower sought funds to finance the purchase of investment properties. Even if this argument is accepted as valid, the Commissioner, charged with protecting the citizens of Maryland from lenders who do not operate in an honest, fair, and efficient manner, has jurisdiction to consider Mr. Snyder's actions with regard to a possible violation of Section 11-517(a)(5). The statute does not require that the conduct under consideration take place while working under the license. Had the General Assembly intended to place such a condition on this subsection, it could have included the language found in Section 11-517(a)(3), "in connection with any mortgage loan or loan application transaction." By not placing such restrictions on (a)(5), the General Assembly has given the Commissioner the ability to consider actions beyond those taken under the license in determining whether a company should continue to be licensed.

Mr. Snyder also claims that the Commissioner's Office was barred by the doctrine of laches from proceeding against

him. "Laches is a defense in equity against stale claims, and is based upon grounds of sound public policy by discouraging fusty demands for the peace of society.'" *Parker v. Board of Election Supervisors*, 230 Md. 126, 130 (1962) (citations omitted). For laches to bar an action, there must be both an inexcusable delay and prejudice to another party. *Ross v. Board of Elections*, 387 Md. 649, 670 (2005). The delay complained of by Mr. Snyder is presumably the time that passed from when [REDACTED] complaint was referred from the Tennessee Department of Financial Institutions to the Commissioner's Office (sometime after November 2005) to the time that the charges were brought (April 2007). According to Mr. Snyder, the prejudice to him was that he did not have the opportunity to resolve the complaint during that time. However, as the ALJ found, [REDACTED] made repeated attempts to contact Mr. Snyder for return of his money, but Mr. Snyder did not respond. Finding of Fact #8; CFR Exh. ##15 and 17. Having failed to respond to direct requests from [REDACTED], Mr. Snyder's reliance on laches, a doctrine of the equity courts where fairness is the goal, and "clean hands" are required, is misplaced. He had the opportunity in 2005 to return the money, and failed to do so. He cannot now blame that failure on the Commissioner's Office.¹

¹ There is no requirement in Section 11-515, the section governing investigations by the Commissioner's Office, that the licensee be notified of a complaint that has been filed or that the licensee be given the opportunity to respond to a complaint. The licensee is, of

His argument that he would return the \$7,500 to [REDACTED] but for instructions from his attorney is similarly faulty. He had that opportunity and did not avail himself of it. His present intentions do not erase his inaction during the time that demands for the money were being made by [REDACTED], or, for that matter, in the months and years that followed before the charges in this case were even brought.

Having reviewed the recommended order including the Findings of Fact of the ALJ, and having considered Mr. Snyder's arguments and the response thereto, the Commissioner concludes that the charge against Mortgage Bankers, Ltd. is supported by the evidence, and that there is no support for the legal challenges presented.

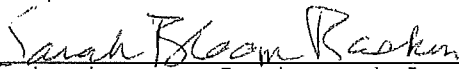
The Commissioner agrees with the ALJ that the appropriate sanction in this case is revocation of the mortgage lender license. Mr. Snyder directed [REDACTED] to send him \$7,500 to pay for appraisal of the properties. No appraisals were performed, and Mr. Snyder did not respond to [REDACTED] repeated attempts to contact him about return of the money. Mr. Snyder has now held the money for over two and one-half years. The public cannot be protected from a mortgage lender who treats borrowers, and the money they have entrusted to him, in this way. Therefore, revocation of the license is required.

course, entitled to a hearing when charges have been brought, with the attendant protections of the Administrative Procedure Act as provided for in Section 11-518.

ORDER

The Exceptions filed by the Licensee, Mortgage Lenders, Ltd., having been considered, it is this 8th day of May, 2008, by the Commissioner of Financial Regulation, ORDERED,

- A. That the Licensee, Mortgage Lenders, Ltd., is in violation of Md. Code Ann. Fin. Inst. § 11-517(a)(5);
- B. That the mortgage lending license of Mortgage Bankers, Ltd. is REVOKED;
- C. That the records and publications of the Commissioner of Financial Regulation reflect this decision.


Commissioner of Financial
Regulation